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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Kini M. Seawright; *et al.*,) Case # CV 11-01304-PHX-JAT
11 vs.) Plaintiff,)
12 State of Arizona, *et al.*,)
13 Defendants.)
14 _____)
15)
16)

17 Plaintiffs Kini Seawright and the Estate of Dana Seawright (hereinafter referred to
18 collectively as “Plaintiffs”), by and through undersigned counsel, hereby supplements
19 their Response to Motion for Summary Judgment with a very recent decision from the 9th
20 Circuit Court of Appeals that is very pertinent to the case at hand. The case is *Lemire v.*
21 *California Dep’t of Corrections and Rehabilitation*, No. 2013 U.S. App. LEXIS 16317,
22 No. 11-15475 (9th Cir. August 7, 2013). *Lemire* is a § 1983 action and 14th Amendment
23 substantive due process action brought by the surviving family members of Robert St.
24 Jovite who died by suicide when he was a prisoner in the California State Prison at
25 Solano. The 9th Circuit in *Lemire* held that the Plaintiffs had sufficiently established
26 questions of fact to withstand summary judgment against some of the defendants on both
27

1 the § 1983 claim and the 14th Amendment substantive due process claim due to the
2 defendants' (1) failure to protect and supervise and (2) failure to render medical care.

3 **1. Factual Similarities**

4 There are many similarities between *Lemire* and this case. For example, in
5 *Lemire*, the warden and captain of the Solano facility held a staff meeting that resulted in
6 the removal of all floor officers for 3 ½ hours from the building where St. Jovite was
7 incarcerated. The building still had an officer present in the control booth. During the 3
8 ½ hours in which the floor officers were gone, St. Jovite committed suicide. In this case,
9 the Defendants (allegedly because of short staffing and contrary to the Stiner unit's own
10 policy) left Dana Seawright unattended and unsupervised for an extended period of time
11 through the "collapsing" of an entire building – leaving the entire building where
12 Seawright was located completely unsupervised. During this period of no supervision,
13 Dana Seawright was murdered.

14 Another similarity is that St. Jovite was mentally ill and housed in a building for
15 mentally ill inmates. This created an additional risk of harm to him being left
16 unsupervised. Similarly, inmate Seawright was particularly vulnerable because he had
17 just been the target of an attack the day before his death because of his homosexuality.
18 He was not removed from the building where the attack occurred, and was merely
19 changed to a different pod in the same building.

20 In addition, St. Jovite was not given CPR by the two prison personnel who found
21 him. The court found this established deliberate indifference and held that a reasonable
22 jury could find a violation of § 1983 for failure to provide medical care. Similarly,
23 Seawright was not ever given CPR or medical care for at least 8 minutes after he was
24 discovered (in contravention of Stiner policy). The only medical care he received was to
25 apply pressure to his stab wounds. Tellingly, the 9th Circuit Court of Appeals in *Lemire*
26 found that the prison guards should have given St. Jovite CPR even though Defendants
27 argued that St. Jovite would not have survived or benefitted from CPR. The court noted

1 that “a jury could reasonably determine that St. Jovite was alive and capable of being
2 revived if CPR had been timely provided by [the prison guards]”. *Lemire*, * 39.

3 **2. Legal Standards in Lemire**

4 *Lemire* sets forth some important legal standards applicable in this case as follows:

- 5 • “In a failure to protect claim, an inmate satisfies the ‘sufficiently serious
6 deprivation’ requirement by ‘showing that he is incarcerated under conditions
7 posing a substantial risk of serious harm.’” * 21 [citations omitted].
- 8 • “The objective question of whether a prison officer’s actions have exposed an
9 inmate to a substantial risk of serious harm is a question of fact, and as such must
10 be decided by a jury if there is any room for doubt.” * 21.
- 11 • “Inadequate staffing can create an objective risk of substantial harm in a prison
12 setting that is sufficient to satisfy the objective prong of the deliberate indifference
13 test.” * 21-22.
- 14 • The subjective inquiry of deliberate indifference involves two parts: (1) Plaintiffs
15 must demonstrate that the risk was obvious or provide other circumstantial or
16 direct evidence that the prison officials were aware of the substantial risk of harm
17 to the inmate; and (2) Plaintiffs must show there was no reasonable justification
18 for exposing the inmates to the risk. * 26.
- 19 • “Whether a prison official had the requisite knowledge of a substantial risk is a
20 question of fact subject to demonstration in the usual ways, including inference
21 from circumstantial evidence, and a factfinder may conclude that a prison official
22 knew of a substantial risk from the very fact that the risk was obvious.” * 26,
23 citing, *Farmer*, 511 U.S. at 842.
- 24 • “Failure to provide CPR or other life-saving measures to an inmate in obvious
25 need can provide the basis for liability under § 1983 for deliberate indifference.”
26 *35.

1 Respectfully submitted this 16th day of August, 2013.

2 **GILLESPIE, SHIELDS & DURRANT**

3 S/DAN M. DURRANT

4 Dan M. Durrant

5 Attorneys for Plaintiff

6 **CERTIFICATE OF FILING**

7 I hereby certify that, on August 16, 2013, I electronically transmitted the attached
8 document to the U.S. District Court's Clerk office using the CM/ECF system for filing and
9 transmittal of a Notice of Electronic Filing to attorneys of record on file for this case.

10 /s/ Linda Dittemore

11 Linda Dittemore

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